IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

MFA.No. 1271 of 2002()

OPMV.1888/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
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APPELLANT: PETITIONER/APPELLANT

MADHAVANKUTTY, AGED 30, S/O.NARAYANAN,
CHAKKARATH HOUSE, AYKARAKUNNATH P.O.,
VELUKKARA.

BY ADV. SRI.DINESH R.SHENOY
SRI.T.N.MANOJ

RESPONDENTS: RESPONDENTS
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1. K.K.VALSARAJ, S/O.DAMODHARAN,
PANAN HOUSE, NELLAYI. (DELETED)

2. SEBASTIAN, S/O.ANTONY,
KANAMKUNDAM HOUSE, KALLAMKUNNU P.O.,
VELUKKARA. (DELETED)

3. THE MANAGER, NATIONAL INSURANCE CO.LTD.,
IRINJALAKUDA.

RESPONDENTS 1 AND 2 DELETED FROM THE PARTY ARRAY AS ORDER DATED 9.4.2007 IN THE MEMO FILED BY THE APPELLANT

BY ADV. SRI.M.A.GEORGE
SMT.DEEPA GEORGE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 23/05/2007, THE COURT ON 09/04/2007 DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 1271 OF 2002

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Dated this the 9th day of April, 2007

J U D G M E N T

The claimant in O.P(MV) No.1888 of 1995 on the file of the Motor Accidents Claims Tribunal, Irinjalakuda is the appellant. While the Petitioner was riding a Bicycle, he met with an accident at about 8.00 p.m. on 12.4.1995. According to the petitioner a Motorcycle bearing Reg. No.KRH-4639 came, hit against his Bicycle and he sustained injuries. He filed the claim petition originally claiming a sum of Rs.50,000/-. Subsequently, the claim was enhanced to Rs.97,500/-. The Tribunal, after trial, found that the accident occurred due to the negligence of the driver of the Motorcycle. Petitioner was found eligible for a compensation of Rs.30,800/- with 9% interest. Challenging the inadequacy of the compensation awarded by the Tribunal, this appeal is filed.

2. The finding of the Tribunal that the accident occurred due to the rash or negligence driving of the Motorcycle has became final and conclusive. The finding that the Insurer is liable to pay the compensation awarded also became final. The only

question that arising for consideration is whether the petitioner is entitled to get any additional compensation.

3. Learned counsel for the appellant has strenuously argued before me hat the appellant gave evidence to the effect that he was completely bedridden for a period of six months and he is entitled to get loss of income for that period. It is also argued that the petitioner produced a disability certificate issued by the Medical Board and the Doctor was examined. It is argued that the Doctor has assessed permanent partial disability at 15%. But the Tribunal without assigning any reason fixed 3% disability for earning capacity. It is argued that the appellant is entitled to get 15% as loss of earning capacity. Disability certificate produced by the appellant shows that he has 15% disability and bed rest advised was for six weeks. Though the appellant gave evidence to the effect that he was bedridden for a period of six months, that was not accepted by the Tribunal. The Tribunal has awarded Rs.500/- as compensation towards treatment expenses. According to me Rs.3,000/- more ought to have awarded by the Tribunal under that count. Likewise, the Tribunal has awarded only Rs.8,000/- towards compensation for pain and

suffering. Appellant sustained compression fracture on L1 vertibra. So the amount of Rs.8,000/- awarded by the Tribunal is inadequate. The Tribunal ought to have awarded Rs.10,000/- as compensation for pain and suffering. Considering the entire aspects, loss of earning capacity can also be fixed at 10%. If the disability is fixed at 10%, compensation under that head will come to Rs.30,600/-.

4. In the result, an award is passed in favour of the appellant granting a sum Rs.35,600/- in addition to the compensation awarded by the Tribunal under different heads. The said amount will carry interest at the rate of 7% per annum from the date of petition till date of realisation. Insurer is directed to deposit that amount also. If the amount is deposited, appellant is permitted to withdraw the same.

Appeal is disposed of as above.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 1271 OF 2002

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J U D G M E N T

9TH APRIL, 2007